



[6714-01-P]

Federal Deposit Insurance Corporation

12 CFR Part 341

RIN 3064-AE41

Registration of Securities Transfer Agents

AGENCY: Federal Deposit Insurance Corporation (FDIC)

ACTION: Final rulemaking.

SUMMARY: On December 22, 2015, the FDIC published a notice of proposed rulemaking in the Federal Register for public comment to amend its regulations requiring insured State nonmember banks, or subsidiaries of such banks, that act as transfer agents for qualifying securities under section 12 of the Securities Exchange Act of 1934 ('34 Act) to register with the FDIC (proposed rule). The FDIC is now issuing that proposed rule as final and without change (final rule). The final rule requires insured State savings associations and subsidiaries of such State savings associations that act as transfer agents for qualifying securities to register with the FDIC, similar to the registration requirements applicable to insured State nonmember banks and subsidiaries of such banks. Second, the final rule revises the definition of qualifying securities to reflect statutory changes to the '34 Act made by the Jumpstart Our Business Startups Act (JOBS Act). The final rule is consistent with the FDIC's continuing review of its regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

DATES: This final rule is effective July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Judy Gross, Senior Policy Analyst, (202) 898-7074, jugross@fdic.gov; or Rachel Ackmann, Counsel, (202) 898-6858, rackmann@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The '34 Act provides that an entity must register as a transfer agent if it functions as a transfer agent with respect to any security registered under section 12 of the '34 Act (Section 12) or if it would be required to be registered except for the exemption from registration provided by Section 12(g)(2)(B) or Section 12(g)(2)(G).¹ A transfer agent registers by filing an application for registration with the appropriate regulatory agency.² Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act³ (Dodd-Frank Act), the FDIC was the appropriate regulatory agency only for a state-chartered (State) insured bank that is not a member of the Federal Reserve System and a subsidiary of any such bank, and the Office of Thrift Supervision (OTS) was the appropriate regulatory agency for a State or federal savings association.⁴

In 2010, the Dodd-Frank Act provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. On July 21, 2011, (the “transfer date” established by section 311 of the Dodd-Frank Act), the powers, duties, and functions formerly assigned to, or performed by, the OTS were transferred to (i) the FDIC, as to State savings associations; (ii) the Office of the Comptroller of the Currency (OCC), as to Federal savings associations; and (iii) the Board of Governors of the Federal Reserve System, as to savings and loan holding companies. The Dodd-Frank Act also amended the '34 Act to define the FDIC as the appropriate regulatory agency for insured State savings associations, and

¹ 15 U.S.C. 78q-1(c)(1).

² 15 U.S.C. 78q-1(c)(2).

³ P.L. 111-203 (2010).

⁴ 15 U.S.C. 78c. Additionally, the FDIC has authority to make such rules and regulations as may be necessary to implement the provisions in the '34 Act related to the registration of transfer agents of any institution for which it is the appropriate regulatory agency. 15 U.S.C. 78w(a).

subsidiaries thereof, along with insured State nonmember banks, and subsidiaries thereof.⁵

In 2012, the JOBS Act increased the thresholds at which securities must be registered under Section 12(g)(1) with the Securities and Exchange Commission (SEC).⁶ As amended by the JOBS Act, Section 12(g)(1) generally requires securities' issuers to register their securities when the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by either-- (i) 2,000 persons or (ii) 500 persons who are not accredited investors (as such term is defined by the SEC).⁷

The JOBS Act also amended Section 12(g)(1) to provide that in the case of an issuer that is a bank or a bank holding company, the issuer's securities must be registered when the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons.⁸

Part 341 of the FDIC's regulations (part 341) implements Section 12 of the '34 Act by requiring State nonmember banks and subsidiaries thereof that are transfer agents of qualifying securities to register with the FDIC.⁹ (Part 341 does not currently include requirements for State savings associations or their subsidiaries.) Part 341 defines "qualifying securities" as securities registered on a national securities exchange; or securities issued by a company or bank with 500 or more shareholders and \$1 million or more in total assets, except for securities exempted from registration with the SEC by Section 12(g)(2) (C, D, E, F and H).¹⁰ The second prong of the definition of qualifying securities, regarding securities issued by a company or bank with 500 or more shareholders and \$1 million or more in total assets, is derived from the statutory

⁵ P.L. 111-203, Section 376(a) (2010).

⁶ P.L. 112-106 (2012).

⁷ 15 U.S.C. 781(g)(1)(A).

⁸ 15 U.S.C. 781(g)(1)(B).

⁹ 12 CFR part 341.

¹⁰ 12 CFR 341.2.

requirements in Section 12(g)(1) for registering securities with the SEC.¹¹ As a result of the amendments to the '34 Act made by the Dodd-Frank Act and the JOBS Act, the current exclusion of State savings associations and subsidiaries thereof and the regulatory definition of qualifying securities currently found in part 341 is inconsistent with the statutory threshold for registration requirements now provided in Section 12(g)(1).

The OTS did not issue a rule regarding the registration of securities transfer agents. Instead, the OTS issued a memorandum to covered financial institutions informing such institutions that because of statutory changes in the Financial Services Regulatory Relief Act of 2006,¹² savings and loan associations, their subsidiaries, and savings and loan holding companies should register as transfer agents with the OTS rather than the SEC.¹³ Therefore, this final rule does not rescind any regulation issued by the OTS that was transferred to the FDIC following the transfer date.

II. Proposed Rule

On December 22, 2015, the proposed rule was published in the Federal Register for public comment. In it, the FDIC proposed amendments to its regulations requiring insured State nonmember banks, or subsidiaries of such banks, to register with the FDIC if they act as transfer agents for qualifying securities under Section 12. The FDIC did not receive any comments on the proposed rule. The FDIC is now issuing the proposed rule as final and without change.

III. Description of the Final Rule

a. Section 341.1 Scope

The final rule is part of the FDIC's continuing efforts to enact rule changes required by

¹¹ 15 U.S.C. 78j.

¹² P.L. 109-301 (2006).

¹³ OTS CEO Memorandum Number 258 (July 27, 2007), available at <http://www.occ.gov/static/news-issuances/ots/ceo-memos/ots-ceo-memo-258.pdf>.

the Dodd-Frank Act and more recent statutory changes, such as the JOBS Act, and makes it clear that part 341 applies to insured State nonmember banks, insured State savings associations, and the subsidiaries of such institutions. Expanding the scope of part 341 to include State savings associations is consistent with provisions of the Dodd-Frank Act and serves to increase regulatory consistency for all FDIC-supervised institutions. To that end, the final rule defines the term “covered institution” to include an insured State nonmember bank, an insured State savings association, and the subsidiaries of such institutions.

b. Section 341.2 Definitions

The final rule reconciles the regulatory definition of qualifying securities with the statutory amendments to the '34 Act required by the JOBS Act. The final rule defines qualifying securities as (1) securities registered on a national securities exchange pursuant to Section 12(b) (15 U.S.C. 78l(b)) or (2) securities required to be registered under Section 12(g)(1) (15 U.S.C. 78l(g)(1)), except for securities exempted from registration with the SEC by Section 12(g)(2) (C, D, E, F, and H). As such, securities exempted from registration with the SEC by Sections 12(g)(2)(B) and (G) are included in the definition of qualifying securities. (Section 12(g)(2)(B) includes securities issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), and Section 12(g)(2)(G) refers to securities of certain insurance companies.) Therefore, the final rule defines qualifying securities as: (a) securities registered on a national securities exchange; (b) securities issued by (1) a company with total assets in excess of \$10 million and a class of equity securities (other than exempted securities) held of record by either: (i) 2,000 persons, or (ii) 500 persons who are not accredited investors or (2) a bank or bank holding company with total assets exceeding \$10 million and a class of equity securities (other than exempted securities) held of record by 2,000 or more

persons; (c) securities issued by investment companies registered pursuant to section 15 U.S.C. 80a-8; and (d) securities issued by insurance companies exempt from registration under Section 12(g)(2)(G).

The definition of “qualifying securities” cites to Section 12(g)(1) instead of reciting specific quantitative standards to ensure that the FDIC’s regulations remain consistent with any future statutory changes to Section 12(g)(1) .

c. Section 341.7 Delegations of authority.

The final rule removes the delegations of authorities related to the registration of securities transfer agents from the rule. In the past, the FDIC has taken steps to remove delegations of authority from its regulations in order to provide the agency greater flexibility in the decision-making process.¹⁴ The removal of the delegations of authority from the regulation does not change the existing delegation; it simply moves the delegation from the FDIC’s regulations. Interested parties may access the FDIC’s current delegations of authority on the agency’s website at www.fdic.gov.

d. Technical Corrections

The final rule also makes certain technical corrections to part 341, such as revising outdated citations and updating the name of the FDIC division from which covered institution should request relevant forms.

IV. Regulatory Analyses

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the agencies may not conduct or sponsor, and a respondent is not required to respond to, an

¹⁴ 67 FR 79246 (Dec. 27, 2002).

information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.¹⁵ The FDIC has reviewed the final rule and determined that it does not introduce any new collection of information pursuant to the PRA.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a final rule, to prepare a final regulatory flexibility analysis describing the impact of the final rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of \$550 million or less) or to certify that the final rule does not have a significant economic impact on a substantial number of small entities. For the reasons provided below, the FDIC certifies that the final rule does not have a significant economic impact on a substantial number of small entities. Accordingly, a final regulatory flexibility analysis is not required.

The final rule does not affect a substantial number of small entities.¹⁶ Currently only 17 entities are registered with the FDIC as registered transfer agents. Additionally, the FDIC has not received any new registrations for several years. In fact, over the last 10 years, 18 entities have deregistered as transfer agents (the most recent deregistration was in 2014). Furthermore, if any currently registered transfer agent does not meet the threshold requirements, it could deregister. Therefore, the final rule will likely reduce burden on small entities by increasing the number of entities that could deregister with the FDIC. As such, the final rule does not have a significant economic impact on a substantial number of small entities.

¹⁵ 44 U.S.C. 3501-3521. The current OMB Control Numbers for state nonmember banks filing the transfer agent registration and amendment form is OMB Control No: 3064-0026. The current OMB Control Numbers for state savings associations filing the transfer agent registration and amendment form is OMB Control No: 3064-0027.

¹⁶ In 2010, the OTS estimated that 5 savings associations would be required to register as transfer agents. 75 FR 22184 (2010).

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC sought to present the proposed rule in a simple and straightforward manner and specifically requested comments from the public on how it might make the proposed rule easier to understand. The FDIC did not receive any suggestions on the use of plain language. The FDIC has drafted the final rule in a similar manner to the proposed rule.

List of Subjects in 12 CFR Part 341

Banks, banking; Reporting and recordkeeping requirements; Savings Associations; Securities.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation is amending part 341 of chapter III of Title 12, Code of Federal Regulations as follows:

PART 341—REGISTRATION OF SECURITIES TRANSFER AGENTS

1. The authority citation for part 341 continues to read as follows:

Authority: Secs. 2, 3, 17, 17A and 23(a), Securities Exchange Act of 1934, as amended (15 U.S.C. 78b, 78c, 78q, 78q–1 and 78w(a)).

2. Revise § 341.1 to read as follows:

§ 341.1 Scope.

This part is issued by the Federal Deposit Insurance Corporation (the FDIC) under sections 2, 3(a)(34)(B), 17, 17A and 23(a) of the Securities Exchange Act of 1934 (the Act), as amended (15 U.S.C. 78b, 78c(a)(34)(B), 78q, 78q-1 and 78w(a)) and applies to all insured State nonmember banks, insured State savings associations, or subsidiaries of such institutions, that act as transfer agents for securities registered under section 12 of the Act (15 U.S.C. 78l), or for securities exempt from registration under subsections (g)(2)(B) or (g)(2)(G) of section 12 (15 U.S.C. 78l(g)(2)(B) and (G)) (securities of investment companies, including mutual funds, and certain insurance companies). Such securities are qualifying securities for purposes of this part.

3. In § 341.2, revise paragraphs (h) and (i) to read as follows:

§ 341.2 Definitions.

* * * * *

(h) The term covered institution means an insured State nonmember bank, an insured State savings association, and any subsidiary of such institutions.

(i) The term qualifying securities means:

(1) Securities registered on a national securities exchange (15 U.S.C. 78l(b)); or

(2) Securities required to be registered under section 12(g)(1) of the Act (15 U.S.C. 78l(g)(1)), except for securities exempted from registration with the SEC by section 12(g)(2) (C, D, E, F, and H) of the Act.

4. § 341.3, revise paragraph (a) and the last sentence in paragraph (c) to read as follows:

§ 341.3 Registration as securities transfer agent.

(a) *Requirement for registration.* Any covered institution that performs any of the functions of a transfer agent as described in § 341.2(a) with respect to qualifying securities shall register with the FDIC in the manner indicated in this section.

* * * * *

(c) * * * Form TA–1 may be completed electronically and is available from the FDIC at www.fdic.gov or the Federal Financial Institutions Examination Council at www.ffiec.gov, or upon request, from the Director, Division of Risk Management Supervision (RMS), FDIC, Washington, DC 20429.

5. In § 341.5, revise the last sentence in paragraph (b) to read as follows:

§ 341.5 Withdrawal from registration.

(b) * * * A Request for Deregistration form is available electronically from www.fdic.gov or by request from the Director, Division of Risk Management Supervision (RMS), FDIC, Washington, DC 20429.

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§ 341.7 [Removed]

6. Remove § 341.7.

By order of the Board of Directors.

Dated at Washington, DC, this 26th day of April, 2016.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary

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